IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5547 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MOHMAD IRFAN SULEMANBHAI & ORS.

Versus

SECRETARY, REVENUE DEPTT. (APPEALS) & ORS.

Appearance:

MS MEGHA JANI for Petitioners

MR HL JANI for Respondent No. 1 and 2

None present for Respondents No. 3 to 26

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/12/96

ORAL JUDGEMENT

1. The petitioners by this petition are challenging the show-cause notice dated 15th May, 1984 issued by the Secretary (Appeals) Gujarat state annexure `D' to this petition.

2. The facts in brief of the case are as follows:

The petitioners no.1 to 4 had applied for

permission for N.A. use of their land bearing Block no.100 to 104 and 106 to 108 of Santha taluka admeasuring 1,24,927 sq. mts.. The N.A. permission as per the petitioners' case, was requested so as to utilise the land for industrial purpose. Under the order dated 14th May, 1981, the Taluka Development Officer was pleased to grant N.A. permission to the petitioner as prayed under sec.65 of the Bombay Land Revenue Code, 1879. After the aforesaid N.A. permission, the petitioners no.1 to 4 sold the said land to Sanand Land Industrial Estate Corporation, the petitioner no.5, under different sale deeds. One of the sale deeds has been produced on record which is dated 11-9-1981 of block no.107. The petitioner no.5 after purchase of the aforesaid land levelled the same after removing ditches etc., made sub plots, put up fencing and also construction upto plinth level. The petitioner no.5 has stated that he incurred an expenditure of Rs.335337/- for the purchase of land and approximately Rs.5 lac for the development thereof. The petitioner no.5 sold those plots to different industrialists by entering into necessary sale deeds. A copy of one such sale deed has been produced on the record of this case. The plot holders of the land have also been impleaded as party to this petition. The further fact has been given that many persons who have purchased the plot have put on construction of factory thereon and they have started production. The showcause notice was given to the petitioners in exercise of suo motu power of revision under sec.211 of the Bombay Land Revenue Code, 1879 for the cancellation of the grant of N.A. permission under the order dated 14th May, 1981. Another order has been given for fixation of the date of hearing on 19th September, 1984. One of the grievance has been made by the petitioner no.5 that the name of petitioner no.5 has been mutated in the revenue record, but no notice has been given to him by the revisional authority. The grievance has also been made that the notice was not given to the other plot holders.

3. No reply to this Special Civil Application has been filed by the respondent.

4. The learned counsel for the petitioners contended that issuance of the showcause notice exercising suo motu powers of revision after three years of the order of grant of N.A. permission is illegal. She has further contended that the powers should have been exercised within a few months of the order of the grant of N.A. permission and this delay in giving of the showcause notice is taken to be fatal and notice should be quashed and set aside only on this ground. Ms. Megha Jani

lastly contended that the land has been mutated in the name of petitioner no.5 and as such, the notice should have been given to petitioner no.5 also. Carrying further this contention, the counsel for the petitioners contended that the notice should have also been given to the plot holders. In support of her contention, the counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Gujarat vs. P. Raghav reported in AIR 1969 SC 1297 and on the decisions of this court in the case of Bhagwanji Bawanji vs. State reported in 12 GLR 156, in the case of (M/s.) Yashkumar Builders vs. State of Gujarat reported in 1989(1) GLH 177 and in the case of Bipinchandra G. Dalal vs. State of Gujarat reported in 1987 GLT 119.

5. The counsel for the respondent, on the other hand, contended that this writ petition filed by the petitioner against the showcause notice, and as such, the same is not maintainable. It is further submitted by the counsel for the respondent that no maximum period has been prescribed under the Bombay Land Revenue Code for exercise of suo motu powers of revision of the order of grant of N.A. permission by the authority. Whether this power has been exercised within reasonable time or not, is a pure question of fact. It is not a pure question of law. There may be reasons for giving of the notice after three years of the grant of permission, and this point can be raised by the petitioners before the authority concerned. The filing of this petition directly before this court without first approaching to the authority who has given the showcause notice, is wholly unjustified.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. When asked by the court, the counsel for the petitioner has admitted that the authority has jurisdiction to give the showcause notice to the petitioner, but what she contended that it should have been given within reasonable time. So there is no dispute that the authority has the jurisdiction as well as was competent to give the showcause notice in the matter to the petitioner for exercising suo motu powers in this case under sec.211 of the Bombay Land Revenue Code, but the only grievance of the petitioner is that it should have been given within reasonable time and the period of three years cannot be said to be a reasonable time.

7. In the case of Executive Engineer B.S.H.B. v. Ramesh Kumar Singh reported in 1996(1) SCC 327, in para no.2 thereof, the Hon'ble Supreme Court has observed that

this is a typical case where the extraordinary discretionary jurisdiction vested in the High Court under Article 226 of the Constitution of India was improperly invoked, and the High Court was pleased to exercise its jurisdiction resulting in an abuse of the process. The first respondent therein assailed the showcause notice issued to him by the third respondent therein under sec.59 of the Bihar State Housing Board Act by filing a writ petition in the Patna High Court. The Division Bench of Patna High Court quashed the showcause notice and also the eviction proceedings pending before the third respondent. The Board, the party respondent in the writ petition approached to the Hon'ble Supreme Court by way of Special Leave Application. The facts of the case were that the appellant-Board has allotted quarter to the fourth respondent on hire purchase basis. Under the provisions of the Bihar State Housing Board Act, 1982 and the Bihar State Housing Board (Management and Disposal of the Housing Estates) Regulations of 1983, detailed procedure for allotment, payment of hire purchase amount, vesting of ownership on payment of last instalment by the hirer, procedure for summary eviction of unauthorised occupation etc. are provided. The hirer is a tenant of Board till the last instalment is paid whereafter, the ownership is transferred to the hirer by executing an appropriate conveyance. The fourth respondent, allottee of the quarter, complained to the third respondent that he has been allotted the said building by the Board, and while he was residing with his family in the said building, the first respondent has forcibly and unauthorisedly occupied the first floor of the building. The third respondent forwarded the aforesaid communication to the appellant i.e. the Executing Engineer, Bihar State Housing Board. The appellant by annexure dated 15th December, 1992 informed the third respondent, S.D.O. that the house in dispute stands allotted to the fourth respondent and application of the fourth respondent, which is self-explanatory, praying for the eviction of the portion unauthorisedly occupied by the first respondent, is referred for necessary action. In this background, the third respondent issued a notice dated 16-12-1992 to the first respondent to show cause why an order of eviction of the house in question be not passed. The first respondent instead of showing the cause against the notice straightaway approached the High Court by filing the writ petition. The High Court has allowed the petition, as stated aforesaid. The Hon'ble Supreme Court in this decision in para no.10 and 11 held as under:

10. We are concerned in this case, with

the entertainment of the writ petition against a show-cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext.P-4 notice is ex facie a `nullity' or totally "without jurisdiction" in the traditional sense of that expression - that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Consitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India.

11. On the facts of this case, we hold that the first respondent was unjustified in invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, without first showing cause against Annexure Ext. P-4 before the third respondent. The appropriate procedure for the first respondent would have been to file his objections and place necessary materials before the third respondent and invite a decision as to whether the proceedings initiated by the third respondent under Section 59 of the Bihar State Housing Board Act, 1982, are justified and appropriate. The adjudication in that behalf necessarily involves disputed questions of fact which require investigation. In such a case, proceedings under Article 226 of the Constitution can hardly be an appropriate remedy. The High Court committed a grave error in entertaining the writ petition and in allowing the same by quashing Annexure Ext. P-4 and also the eviction proceedings No.6 of

> 1992, without proper and fair investigation of the basic facts. We are, therefore, constrained to set aside the judgment of the High Court of Patna in CWJC No.82 of 1993 dated 10-2-1993. We hereby do so. The appeal is allowed with costs.

8. In the present case, the petitioner has not attacked the validity of any of the provisions of the Bombay Land Revenue Code including the provisions of sec.211 thereof. It is also not the case of the petitioners that any of their fundamental right guaranteed by the Constitution is infringed. At this stage of show-cause notice, the petitioners should show that the authority has no justification to enter upon the inquiry in question. As stated earlier, in the present case, the counsel for the petitioners has not disputed that the respondent has power and jurisdiction to give the show-cause notice. I have gone through the contents of the Special Civil Application also and found therefrom that the sole grievance of the petitioners is that the show-cause notice has been given after three years of the date of grant of N.A. permission, and as such, it is bad. Even if we take that the notice is given after three years of grant of N.A. permission, in the absence of any maximum limitation prescribed under sec.211 of the Code, on this ground alone it cannot be said that the action of the respondent is without jurisdiction. The Hon'ble Supreme Court in such cases considered it appropriate that the party should avail of alternate remedy and show cause against the show cause notice before the authority concerned and take up the objections in reply to the show-cause notice. In the event of any adverse decision, as observed by the Hon'ble Supreme Court, it will certainly be open to the party concerned to assail the same either in the appeal or revision, if provided, or in appropriate case by invoking the jurisdiction of this court under Article 226 of the Constitution of India. The show-cause notice which has been given in the present case cannot be held to be a `nullity' or "totally without jurisdiction" in the traditional sense of that expression, that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. The show-cause notice has been produced by the petitioners on the record. The reasons for which the suo motu powers of revision were sought to be exercised have been given out therein. The first reason has been given that before the N.A. permission, no opinion from the Special Land Acquisition Officer and Deputy Collector has been taken where any action/proceeding is going on for the acquisition of the

land in question. The second reason has been given that the State Highway from Ahmedabad to Viramgam passes in the southern side of the land in dispute. The building even made as per the sanctioned plan of the land keeping 40 mts. distance from the middle of the way, which is said to be in breach of controlling line. As per the rule of controlling line, controlling line is fixed at 75 mts.. Otherwise also, before granting the N.A. permission and sanction of the plan, the opinion of Executing Engineer of the department has not been taken. The third ground has been given that before grant of N.A. permission for the land in dispute for industrial purposes, opinion of District Industries Centre and G.I.D.C. have not been taken. The fourth reason has been given that the land in dispute comes in agricultural zone of Ahmedabad Urban Development Authority, but the permission has been granted without sanctioning of the plan by AUDA or taking its opinion. The fifth reason has been given that before the grant of N.A. permission for the land in dispute for industrial purposes, the opinion of Gujarat Air and Water Pollution Board has not been taken. The sixth ground has been given that the N.A. permission is given without considering the provisions of the resolution of the Government of Revenue Department dated 25th March, 1981. Another ground has been given that there is nothing on record to show how the land was got by the petitioners. The petitioners were directed to remain present on 12-6-1984 with their reply. They have been directed to show cause in writing within 15 days of the receipt of the notice. That date has been adjourned to 19th September, 1984 as it comes out from Annexure `E'. Under annexure `E' the petitioners were directed to submit whatever they like either personally or through advocate. This Special Civil Application has been filed by the petitioners before this court on 9th November, 1984. So instead of approaching to the authority concerned and showing cause against the show-cause notice straightaway the petitioners have approached to this court.

9. In view of the decision of the Supreme Court in the case of Executive Engineer, B.S.H.B. vs. Ramesh Kumar Singh (supra), this petition is not maintainable.

10. Strong reliance has been placed by the counsel for the petitioners on the decision of the Hon'ble Supreme Court in the case of State of Gujarat vs. P. Raghav reported in AIR 1969 SC 1297 that the notice could have been given only within two months and if it is not given within the said period then it is bad in law. So far as the authorities of this court are concerned, the

same are also on the question that the notice should have been given under sec.211 of the Code within reasonable time.

11. In the case of State of Gujarat vs. P. Raghav (supra) the court was concerned with the revisional powers of the authority under sec.211 of the Bombay Land Revenue Code, 1879. The petitioner therein prayed for grant to convert agricultural land for nonagricultural use under sec.65. Initially the application was rejected but on remand the permission was granted on 2nd July, 1960 and pursuant to the said order a sanad was issued on 27th July, 1960. The Municipal Committee, Rajkot objected to the grant of N.A. permission, but the objection raised were overruled and hence the Municipal Committee approached to the Commissioner by filing Revision Application under sec.211 which was allowed and order of the Collector was set aside i.e. after a period of more than one year. The petitioner therein approached to this court and the order of the Commissioner was set aside. The State approached to the Hon'ble Supreme Court. The question before the Hon'ble Supreme Court was, within how much time the revisional powers under sec.211 could be exercised by the revisional authority. Taking into account, the object underlying sec.65 of the Code, the Hon'ble Supreme Court has observed:

> It seems to use that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under Section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission.

12. Thus, in the light of statutory provisions contained in sec.65 of the Bombay Land Revenue Code, the

circumstances which were likely to ensue in not passing any order within stipulated time, the Hon'ble Supreme Court observed that the revisional powers must be exercised within few months. Reading of sec.211 and 65 conjointly, the Hon'ble Supreme Court observed that the period of few months must be treated as reasonable because "after the grant of permission for building purposes, the occupant is likely to spend money on starting building operations at least within a few months from the date of permission." Thus, in the facts and circumstances of the case, and considering the nature of the order sought to be revised, the Hon'ble Supreme Court held that such reasonable time must be a period of few months. However, in no uncertain terms, the Hon'ble Supreme Court proceeded to observe that "the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

13. Reference may be made to the decision of the Hon'ble Supreme Court in the case of State of Orissa & Ors. vs. Vrundaban Sharma & Ors. reported in 1995 (Supp) (3) SCC 249. In the aforesaid case, the Tehsildar conferred the tenancy right without obtaining prior confirmation of the Board of Revenue which was a condition precedent. When the Board came to know of the aforesaid action of the Tehsildar, it quashed the order, but by that time the period of twenty seven years was over. It was contended that though no period of limitation was prescribed, the power could have been exercised within reasonable time and by no means, period of twenty seven years could be said to be reasonable. In this case, the Hon'ble Supreme Court has considered its earlier decision in the case of Patel Raghav Natha (supra). After considering the said decision as well as the provisions of the Act, the court has observed:

> "It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenaria in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a

long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order ? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right ? The answers would be no.

14. The Larger Bench of this court in the case of Shailesh Jadavji Veria vs. Sub Registrar, Narmada Bhavan reported in 1996 (2) GLH 848, considering the decisions of the Hon'ble Supreme Court both in the case of Patel Raghavnath (supra) and Vrundaban Sharma (supra), speaking for the Larger Bench, Brother Justice, C.K. Thakker, J, in para no.46 of the judgment observed, that length of time depends on the factual scenario in a given case. The authority may have explanation for exercising powers after a given time and it may have justification to initiate action but these are the matters of the facts which are to be gone into by the authority concerned and not by this court.

15. I fail to see how any prejudice has been caused to the petitioners in case they would have approached to the authority concerned to show cause rather than to straightaway approach this court. The authority has not passed the final order but it has only given a notice, on the grounds on which it has proposed to revise the order made in favour of the petitioners of grant of N.A. permission. The petitioners have a right to make their submissions on merits on each of the ground as well as to take all other legal objections including the objection of delay in initiation of action after three years. Whether the initiation of action after three years is justified or not, is a matter of fact which could have been gone into by the authority on the basis of the material produced before it. In such cases, it is always better that the petitioners first takes the decision from the authority concerned by giving the reply to the show cause notice and only when the ultimate decision is given against the party concerned, then he may have a remedy of appeal or revision, if available, as the case may be, and if no remedy is available, to approach this court by way of writ petition under Article 226 of the Constitution of India.

16. The course which is adopted in the present case by the petitioners is difficult to appreciate. The grounds on the basis of which the order is sought to be revised are of serious nature and as such, it is appropriate for the authority first to give its own decision in the matter. When the matter comes before

this court after the final decision on the show-cause notice, this court may also be in a better position to appreciate the controversy.

17. Taking into consideration the fact that no prejudice has been caused to the petitioners by issuing the show-cause notice, the petitioners have ample opportunity to make all the submissions and take all the objections against the show-cause notice as well as the grounds which have been given for the revision of the order, I do not consider it to be appropriate for this court to interfere in the matter at the show-cause notice stage. As held by the Supreme court in the case of Executive Engineer, B.S.H.B. vs. Ramesh Kumar Singh (supra), this writ petition is not maintainable.

18. In the result, this writ petition fails and the same is dismissed. The petitioners are directed to pay costs of Rs.1000/- to the respondent. However, it shall be open to all the concerned parties to file their objections against the show-cause notice with necessary material and the authority concerned shall afford an opportunity of hearing to the persons whosoever desires, and consider the objections, if any, submitted by the parties. Rule discharged. Interim relief granted by this court stands vacated.

****

zgs/-